IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LARRY FARRINGTON, PETITIONER, VS. **PUBLIC EMPLOYMENT RELATIONS BOARD,** RESPONDENT.	**No. ACCL003126** **RULING ON PETITIONER'S APPLICATION FOR JUDICIAL REVIEW**

INTRODUCTION

The above-captioned matter came before this Court on March 5, 1999, on Mr. Farrington's Petition for Judicial Review. The respondent Public Employment Relations Board was represented at the hearing by Jan V. Berry, and the petitioner was represented by Pamela J. Prager. After reviewing the court file, including the briefs filed by both parties and the certified administrative record, the Court now enters the following ruling:

STATEMENT OF THE CASE

Petitioner Larry Farrington, (Farrington) was a Correctional Supervisor I with the Iowa Men's Reformatory in Anamosa. Farrington was demoted to Correctional Officer I on May 10, 1996 for alleged use of excessive force on an inmate. Petitioner has requested judicial review of final agency action of the Public Employment Relations Board (PERB) pursuant to Iowa Code section 17A.19. Farrington appeals the PERB decision (98-MA-01) of May 28, 1998, which dismissed his state employee disciplinary action appeal for lack of jurisdiction due to its untimely filing.

STATEMENT OF THE FACTS

This case began with a misunderstanding as to the grievance process. The Iowa Department of Personnel (IDOP) rules required the Iowa Department of Corrections (DOC) to include within the written notice of discipline the verbatim text of IDOP subrule 581-11.2(6), which specifies how

disciplined employees may appeal such actions. DOC, however, failed to comply with the rule's requirements in this instance. Instead, Farrington was provided with the by-then-outdated text of a former version of the rule. Acting in reliance on the procedure DOC had provided, Farrington mistakenly appealed the discipline to the DOC director, Sally Halford. In fact, pursuant to the then-effective rule, his appeal should have been filed with the IDOP director.

When he received no response from the DOC director, Farrington filed an Iowa Code section 19A.14(2) disciplinary action appeal with PERB (97-MA-01). The State moved to dismiss the action due to Farrington's failure to first appeal the discipline to the IDOP director. Following proceedings on the State's motion before a PERB administrative law judge and an intra-agency appeal to the full Board, PERB issued a decision on May 7, 1997, which denied the State's motion to dismiss and read in pertinent part as follows:

> We conclude that Farrington's failure to properly follow the disciplinary appeal procedures . . . was attributable to DOC's inadvertent error in giving him flawed notice on which he reasonably relied. . . . Since DOC failed to give Farrington proper notice of his appeal rights as required by IDOP subrule 581-11.2(5), we conclude that the proper result in this case is to treat the disciplinary appeal as if it had been properly filed with the IDOP director and remand it to IDOP for appropriate action. *Should Farrington subsequently wish to appeal from the IDOP director's decision, a new appeal with PERB will be required.* Consequently, we enter the following:
>
> ORDER
>
> The State's motion to dismiss is DENIED. Farrington's appeal is remanded to the Director of the Iowa Department of Personnel for consideration pursuant to Iowa Code section 19.14(2). This order constitutes final agency action. (emphasis added).

Neither party petitioned for judicial review of the final PERB decision in that case. Pursuant to PERB's order, the petitioner's appeal was considered by a designee of the IDOP Director who, on

July, 17, 1997, issued a response denying the appeal.

On August 27, 1997, 41 days following the IDOP Director's response, Farrington filed the Iowa Code section 19A.14(2) disciplinary action appeal which led to the instant judicial review proceeding. The State moved to dismiss the appeal for lack of PERB jurisdiction, due to its untimely filing.

Following hearing on the State's motion, a second PERB ALJ issued a proposed decision and order pursuant to Iowa Code section 17A.15(3) which proposed dismissal of Farrington's appeal due to its untimely filing. Farrington promptly perfected an intra-agency appeal to the full PERB pursuant to section 17A.15(3) and PERB rule. The Board, after receiving oral arguments and Farrington's brief, issued the decision under review on May 28, 1998, adopting the ALJ's findings and conclusions and dismissing Farrington's complaint.

STANDARD OF REVIEW

On judicial review of an agency action, the district court functions in an appellate capacity. Iowa Planners Network v. Iowa State Commerce Comm'n, 373 N.W.2d 106, 108 (Iowa 1985). Judicial review of a final agency action is governed by application of standards set out in Iowa Code § 17A.19 (1997). The court will inquire whether the petitioner's rights have been prejudiced by an agency decision that is unreasonable, arbitrary or capricious, or which lacks substantial evidentiary support in the record. Id. Thus the court may reverse, modify, or grant other appropriate relief only if the agency's action is affected by error of law, is unsupported by substantial evidence in the record, or is characterized by an abuse of discretion. Burns v. Bd. of Nursing, 495 N.W.2d 698, 699 (Iowa 1993).

The district court's review is limited to corrections of errors of law and is not de novo.

Second Injury Fund v. Klebs, 539 N.W.2d 178, 180 (Iowa 1995); Harlan v. Iowa Div. of Job Serv., 350 N.W.2d 192, 193 (Iowa 1984). An agency's factual findings must stand if supported by substantial evidence when the record is viewed as a whole. Sierra v. Employment Appeal Bd., 508 N.W.2d 719, 720 (Iowa 1993). Evidence is substantial if a reasonable person could accept it as adequate to reach the same findings. Munson v. Iowa Dep't of Transp., 513 N.W.2d 722, 723 (Iowa 1994); Suluki v. Employment Appeal Bd., 503 N.W.2d 402, 404 (Iowa 1993). Not only must the agency's final decision be supported by substantial evidence, the agency must also be correct in its conclusions of law. Glowacki v. Iowa Bd.. Of Medical Examiners, 516 N.W.2d 881, 884 (Iowa 1994). It is ultimately the duty of the court to determine matters of law, including the interpretation of a statute, or an agency rule interpreting a statute. Hollinrake v. Iowa Law Enforcement Acad., 452 N.W.2d 598, 601 (Iowa 1990).

Where the evidence is in conflict or where reasonable minds might disagree about the conclusion to be drawn from the evidence, the court must give appropriate deference to the agency's findings. Aluminum Co. v. Employment Appeal Bd., 449 N.W.2d 391, 394 (Iowa 1989). The ultimate question is not whether the evidence supports a different finding, but whether the evidence supports the findings actually made. Munson v. Iowa Dep't of Transp., 513 N.W.2d at 723.

ANALYSIS

In his application for judicial review, the petitioner argues the following: 1) that PERB was required to retain jurisdiction upon remand and he should not be required to file a new appeal; and 2) that equity requires PERB to hear his claim on the merits. The respondent, on the other hand, maintains that the PERB decision under review is free from any of the defects specified in Iowa Code section 17A.19(8), and that mistake or inadvertence with regard to timely filing has cost

Petitioner his right to appeal.

Farrington argues that PERB's decision qualifies for judicial relief under each ground located in Iowa Code section 17A.19(8). He first argues that prior PERB decision 97-MA-01 was legally erroneous because it stated that it constituted final agency action when it should have retained jurisdiction. Petitioner acknowledges that PERB had the power to remand to another administrative agency, but balks at the idea that PERB relinquished jurisdiction of the case at that time. Iowa Code sections 17A.15(1) and (3) state, however, that an agency's decision becomes final in two circumstances: 1) "[w]hen the agency presides at the reception of the evidence in a contested case," and 2) in cases where there is an appeal from a proposed decision or where a proposed decision is reviewed on the agency's motion. It should be noted that the latter situation is exactly what occurred in the instant matter. The administrative law judge's decision in 97-MA-01 was appealed to the full Board, which pursuant to section 17A.15(3), rendered its final decision. PERB was allowed to and did declare the decision it made in 97-MA-01 to be final action on that dispute.

Petitioner directs the Court's attention to Reiter v. Iowa Dep't of Job Serv., 327 N.W.2d 763 (Iowa Ct. App. 1982) for the proposition that a district court retains jurisdiction of cases when they are remanded to administrative agencies for the taking of additional evidence. Farrington, by way of analogy, asks this Court to apply the same logic and find that PERB retained jurisdiction despite the remand to IDOP. The Court declines to extend the rule of Reiter to an inter-agency remand scenario. It should be noted that the Reiter Court pointed out a distinction between "limited remand" under 17A.19(7), in which the district court may retain jurisdiction, and the typical remand envisioned by 17A.19(8), in which the district court loses jurisdiction. See id. at 766-67 (stating that in a limited remand situation, the "district court need not consider the merits of the appeal prior to

ordering the taking of additional evidence. The purpose of the limited remand is to expand the record available to the district court for judicial review and permit the agency to modify its decisions on the basis of the additional evidence. Iowa Code § 17A.19(7). The remand under section 17A.19(8) contemplates the review on the merits and has been held to be appropriate where an erroneous rule of law is applied by the agency or where the record is inadequate for the court to determine effectively the merits of the appeal").

This Court instead agrees with the petitioner in that the instant case is more akin to a situation in which a district court is presented with claims which have not been allowed to follow the appropriate administrative processes. Such a case should not proceed on the merits of the claim—instead, the case should be remanded for the completion of the administrative process. Bugely v. State, 464 N.W.2d 878, 880-81 (Iowa 1991). In Bugely, a prisoner did not exhaust his administrative remedies under Iowa Code section 903A.3(2) in a timely manner because of interference from prison authorities. Id. at 880. The Court stated that, given the circumstances, the district court should not have proceeded on the merits but should have remanded for the completion of the administrative process. Id. The Court opined that the reasons for doing so included "aid[ing] judicial review by allowing the appropriate development of a factual record in an expert forum; conserv[ing] the court's time because of the possibility that the relief applied for may be granted at the administrative level; and allow[ing] the administrative agency an opportunity to correct errors occurring in the course of administrative proceedings"). In doing so, the district court loses jurisdiction over the matter. Id. This was exactly what was done by PERB in the case at bar. PERB allowed the petitioner a chance to develop his case in front of the Iowa Department of Personnel as required. This was done despite the fact that Petitioner filed an appeal with the wrong department

from the beginning. IDOP was the agency that was to hear the grievance initially and it did so, although its ruling was adverse to the petitioner. This Court finds that the situation of the petitioner is similar to that of the prisoner/petitioner in the Bugely case, and that PERB acted appropriately in remanding the case to IDOP for the completion of the administrative process. As such, PERB lost jurisdiction over the case and a new appeal with PERB was required in the event of dissatisfaction with the IDOP response. It must also be remembered that these very requirements were outlined for the petitioner in the ruling by PERB regarding the State's motion to dismiss the initial appeal.

Farrington also argues that the Court should assess the merit of his claim based on equitable grounds. As emphasized above, the Board's decision contained clear and unambiguous language as follows: "Should Farrington subsequently wish to appeal from the IDOP director's decision, *a new appeal with PERB will be required.*" (emphasis added). Because the PERB decision in Case No. 97-MA-01 was designated final agency action, Petitioner was required to commence a new proceeding pursuant to Iowa Code section 19A.14(2) if he was dissatisfied with the IDOP director's response. Section 19A.14(2) is in the form of a statute of limitations, with thirty days being the cut-off point for filing an appeal. See Iowa Code § 19A.14(2) (1997) (stating "[i]f [an employee is] not satisfied [with the director's response], the employee may, within *thirty calendar days* following the director's response, file an appeal with the public employment relations board") (emphasis added). Statutes of limitations in similar administrative settings have been held to be of a mandatory nature rather than "merely directory." See Brown v. PERB, 345 N.W.2d 88, 93-94 (Iowa 1984) (stating that "[a]n administrative agency may not enlarge its powers by waiving a time requirement which is jurisdictional or a prerequisite to the action taken") (citation omitted). Unfortunately, in the instant matter, the petitioner did not file his appeal with PERB until forty-one days had passed from the date

of the IDOP director's response. Petitioner's forty-one day delay in filing his appeal amounted to sleeping on his rights and this Court feels that his equity argument must also fail as a result.

RULING

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the decision of the Public Employment Relations Board (Case No. 98-MA-01) of May 28, 1998 is AFFIRMED.

Dated this 28 day of April, 1999.

J.W. JORDAN, JUDGE
FIFTH JUDICIAL DISTRICT OF IOWA

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